

SUMMARY

KENTUCKY'S UPDATED CONDOMINIUM LAW & ITS PROTECTION OF CONDOMINIUM PURCHASERS AND SELLERS

Kentucky's updated condominium laws became effective on January 1, 2011. These laws are officially known as *The Kentucky Condominium Act*, which includes provisions to protect condominium purchasers and sellers.¹ For example, a condo association must complete a certificate containing information about: restrictions, assessments or other fees, expenses, reserves for capital expenditures, and any lawsuits or unsatisfied judgments against the association. Condominium purchasers have a right to receive this certificate.

Since licensees will likely have buyer-clients and/or seller-clients who are involved in condominium transactions, a KREC-approved *Condominium Seller's Certificate* form has been created. It may be used to satisfy the certificate requirement in the condo law. The form can be accessed from the KREC's website (www.krec.ky.gov) at the following link: [Condominium Seller's Certificate](#).

Licensees should become familiar with the protection that the condo laws provide for purchasers and sellers, including the certificate requirement in KRS 381.9203, which is outlined below.

I. RIGHTS OF CONDO PURCHASERS:

- A. A condo purchaser has a right to receive:
 - 1. A certificate that satisfies the requirements in KRS 381.9203;
 - 2. A copy of the following association records:
 - a. The declaration,² other than the plats and plans;³
 - b. The bylaws; and
 - c. The rules or regulations;
 - 3. A completed operating budget and any balance sheets; and
 - 4. An insurance statement/summary that describes any insurance coverage provided for the benefit of unit owners.
- B. If an association fails to provide a completed certificate or if it is provided later than ten (10) days after the condo seller requests it, then the condo purchaser's contract to buy will be voidable "until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever first occurs."

II. CONDO SELLERS' RESPONSIBILITY & PROTECTION:

- A. A condo seller must furnish the above-listed documents to a condo purchaser, "before execution of any contract for sale of a unit, or otherwise before conveyance."⁴ (Emphasis added.)

¹ KRS 381.9201, 381.9203, 381.9205 and 381.9207 in Kentucky's new condominium law contain the *Protection of Condominium Purchasers* provisions.

² KRS 381.9105(1)(9) defines a "declaration" as "any instrument, including a master deed, however denominated, that creates a condominium, and any amendments to those instruments."

³ See KRS 381.9141(1), which states, in relevant part: "Plats and plans are a part of the declaration. Separate plats and plans are not required by KRS 381.9101 to 381.9207, if all the information required by this section is contained in either a plat or plan. Each plat and plan shall be clear and legible and contain a certification that the plat or plan contains all information required by this section."

⁴ KRS 381.9203(1).

- B. A condo seller is not liable to a condo purchaser:
 - 1. if the association fails or delays to provide the required certificate; or
 - 2. if the association provides a certificate that includes any incorrect information.

III. THE ASSOCIATION’S RIGHT & RESPONSIBILITIES:

- A. An association has a right to charge a reasonable fee to prepare the certificate required in KRS 381.9203;⁵ and
- B. An association must:
 - 1. Furnish the required certificate within ten (10) days after a condo seller requests it;⁶
 - 2. Keep sufficient details in its financial records to enable it to satisfy the certificate requirements;⁷ and
 - 3. Make all financial and other records reasonably available for examination by condo sellers or their authorized agents.⁸

Finally, if a licensee has a seller-client who does not know, or is uncertain about, whether the property to be sold is or is not “a condominium” that is subject to the requirements of the condo law, then the licensee should advise the seller-client to contact a private attorney. A private attorney can review the documents listed in I(A)(2), above—which govern the association (particularly, the declaration or master deed)—and, thereafter, provide the seller with the legal advice that he or she needs. **NOTE: NEITHER A LICENSEE NOR THE COMMISSION CAN PROVIDE THIS SERVICE.** Licensees are not authorized to provide it because they do not possess a license to practice law, and the Commission lacks jurisdiction over such matters.

Specifically, Kentucky’s updated condominium law provisions are not included in Kentucky’s real estate license laws, KRS Chapter 324. They are found in KRS Chapter 381 and can be accessed from the following website: <http://www.lrc.ky.gov/KRS/381-00/CHAPTER.HTM>

Moreover, as KRS 324.2812 states, the KREC does not have any jurisdiction over “community association managers and the management or business activities of not-for-profit community associations, which include townhouse, condominium, homeowner, or neighborhood associations.” **Again, if you have questions or concerns in these areas, a private attorney should be contacted.**

Revised June 2011

⁵ KRS 381.9167(1)(l).

⁶ KRS 381.9203(2).

⁷ KRS 381.9197.

⁸ KRS 381.9197.

